

# HOUSE BILL REPORT

## HB 1644

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**As Reported by House Committee On:**  
Juvenile Justice & Family Law

**Title:** An act relating to interrogation and waiver.

**Brief Description:** Changing the law pertaining to waiver of rights by a juvenile.

**Sponsors:** Representatives B. Sullivan and Lovick.

**Brief History:**

**Committee Activity:**

Juvenile Justice & Family Law: 2/8/05, 2/23/05 [DPS].

**Brief Summary of Substitute Bill**

- Requires law enforcement to make reasonable attempts to notify a child's parent, guardian, or custodian when the child is taken into custody and is being held.
- Requires law enforcement to permit a parent to immediately consult with his or her child upon the parent's request, unless the child objects.
- Requires law enforcement to advise a juvenile who is in custody of specific rights including the right to remain silent, counsel, and to consult with a parent, guardian or custodian before being questioned.
- Prohibits a juvenile from waiving his or her right to counsel in a juvenile court offender proceeding unless the juvenile consults with counsel and the waiver is knowing and voluntary.

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**HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Dickerson, Chair; Moeller, Vice Chair; Lovick and Roberts.

**Minority Report:** Do not pass. Signed by 3 members: Representatives McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; and Crouse.

**Staff:** Sonja Hallum (786-7092).

**Background:**

Juveniles who are accused of criminal activity are provided essentially the same constitutional guarantees and procedural safeguards as an adult defendant. Two such rights guaranteed to a juvenile who is charged with a criminal offense are the privilege against self-incrimination and the right to have an attorney appointed to represent the juvenile in court.

Prior to questioning a juvenile who is in custody, law enforcement is required to notify the juvenile of his or her right to remain silent, the fact that anything the juvenile says may be used against him or her, and that he or she has the right to counsel. This is the same notification that must be provided to adults and is commonly referred to as the "Miranda" warnings, based on the name of a United States Supreme Court case that recognized the right to the notification.

The juvenile court can appoint an attorney to represent the juvenile, without any cost to the juvenile, to represent a juvenile charged with a criminal offense. A juvenile may waive his right to an attorney. The current Washington statutes do not set out requirements for waiver of counsel.

Under Washington case law, a court will review decisions to waive rights such as the privilege against self-incrimination and the right to counsel to determine whether the waiver was knowing and voluntary. The court will look to the circumstances surrounding the waiver and determine if the juvenile understood the rights he or she waived and whether the waiver was voluntary, and not coerced.

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## **Summary of Substitute Bill:**

### Interrogation

Law enforcement is required to make reasonable attempts to notify a child's parent, guardian, or custodian when the child is taken into custody and is being held.

When a parent, guardian or custodian requests to consult with the child, and makes himself or herself immediately available, law enforcement must permit the parent to immediately consult with his or her child, unless the child objects.

Law enforcement must advise a juvenile who is in custody of specific rights including the right to remain silent, anything the juvenile says may be used against him, the right to counsel, and to consult with a parent, guardian or custodian before being questioned.

### Waiver of Counsel

The ability of a juvenile to waive his or her right to counsel in a juvenile offender court proceeding is restricted. A parent is prohibited from waiving the child's right to the assistance of counsel.

A juvenile may only waive his or her right to counsel if the court finds that the juvenile has first consulted with an attorney and that the waiver is knowing and voluntary. When making

his or her determination, the judge should consider the juvenile's school performance and any testing conducted by the school.

The court may only determine that the waiver was knowing and voluntary if the court questions the child on the record during a court hearing about the decision to waive the right to counsel and the court finds that the juvenile fully comprehends the following:

- (1) the nature of the allegations and the proceedings, and the range of allowable dispositions;
- (2) that counsel would be of valuable assistance in determining and presenting any defenses to the allegations in the petition or charge, or other mitigating circumstances;
- (3) that the right to the assistance of counsel includes the right to the prompt assignment of an attorney, without charge to the child or the child's parents if they are financially unable to obtain private counsel;
- (4) that even if the child intends not to contest the petition or charge, counsel may be of substantial assistance in developing and presenting material that could favorably affect the disposition; and
- (5) that among the child's rights at any hearing are the right to call witnesses on the child's behalf, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of the elements of the charge or status offense.

If a juvenile appears at a hearing without an attorney the court must continue the case, unless the juvenile has previously waived his or her right to counsel in accordance with the new requirements for waiver of counsel. This continuance, however, may not be a basis to hold the juvenile in detention.

**Substitute Bill Compared to Original Bill:**

The original bill prohibited a juvenile under the age of 16 from waiving his or her rights without consulting with a parent, guardian, custodian, or attorney.

The substitute bill removes this general requirement and instead establishes specific requirements for interrogation of a juvenile and waiver of the right to counsel.

The substitute bill creates rules for law enforcement when interrogating a juvenile, including the requirement to attempt to contact the parent and to permit the parent to talk with the child.

The substitute bill also establishes a statutory warning that must be given to the juvenile before law enforcement may question the juvenile that is more broad than the adult "Miranda" warning.

The substitute bill adds the specific requirements that a court must find before the court may rule the waiver of counsel by the juvenile to be knowing and voluntary.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support on original bill) Last year, my son who has never been in trouble was falsely accused of a crime and was charged based on a coerced confession. The judge ended up throwing out the confession. The police told the school not to call the child's parents and no school officials were permitted in the room when the child was being questioned. We need to make sure this doesn't happen again because it could be your child or your constituent. A child was questioned by police while the mother was at work and the mother was not notified. The child was arrested and placed in detention and charges were never even filed. If my child were injured, or if there was a field trip at school, I would know about it, but not if the police are interrogating my child.

**Testimony Against:** We can't support the bill in this form. We already have a court rule to determine if statements are admissible. Remember that there are two sides. Every case has a defendant, but every case also has a victim. You can look at parental notification and Miranda, but don't make a bright line rule saying that statements are inadmissible. We already have an individualized system that works.

**Persons Testifying:** (In support) Reverend Paul A. Stoot, Greater Trinity Baptist Church; Ruby Hayden; and Bob Boruchowitz, Washington Defender Association.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.